



Income Tax Department

Ministry of Finance, Government of India

1119. Clarifications on various provisions relating to tax deduction at source regarding changes introduced through Finance Act, 1995

The Finance Act, 1995, has enlarged the scope of income-tax deduction at source by making various amendments. In regard to the changes introduced through the Finance Act, 1995, a number of queries have been received from the various associations and professional bodies on the scope of tax deduction at source. It would be desirable to clarify the doubts by issuing a public circular in the form of question answers as under :

Question 1 : What would be the scope of an advertising contract for the purpose of section 194C of the Act?

Answer : The term 'advertising' has not been defined in the Act. During the course of the consideration of the Finance Bill, 1995, the Finance Minister clarified on the Floor of the House that the amended provisions of tax deduction at source would apply when a client makes payment to an advertising agency and not when advertising agency makes payment to the media, which includes both print and electronic media. The deduction is required to be made at the rate of 1 per cent. It was further clarified that when an advertising agency makes payments to their models, artists, photographers, etc., the tax shall be deducted at the rate of 5 per cent as applicable to fees for professional and technical services under section 194J of the Act.

Question 2 : Whether the advertising agency would deduct tax at source out of payments made to the media ?

Answer : No. The position has been clarified in the answer to question No. 1 above.

Question 3 : At what rate is tax to be deducted if the advertising agencies give a consolidated bill including charges for art work and other related jobs as well as payments made by them to media ?

Answer : The deduction will have to be made under section 194C at the rate of 1 per cent. The advertising agencies shall have to deduct tax at source at the rate of 5 per cent under section 194J while making payments to artists, actors, models, etc. If payments are made for production of programmes for the purpose of broadcasting and telecasting, these payments will be subjected to TDS @ 2 per cent. Even if the production of such programmes is for the purpose of preparing advertisement material, not for immediate advertising, the payment will be subject to TDS at the rate of 2 per cent.

Question 4 : Where the tax is required to be deducted at source on payments made directly to the print media/Doordarshan for release of advertisements ?

Answer : The payments made directly to print and electronic media would be covered under section 194C as these are in the nature of payments for purposes of advertising. Deduction will have to be made at the rate of 1 per cent. It may, however, be clarified that the payments made directly to Doordarshan may not be subjected to TDS as Doordarshan, being a Government agency, is not liable to income-tax.

Question 5 : Whether a contract for putting up a hoarding would be covered under section 194C or 194-I of the Act ?

Answer : The contract for putting up a hoarding is in the nature of advertising contract and provisions of section 194C would be applicable. It may, however, be clarified that if a person has taken a particular space on rent and thereafter sub lets the same fully or in part for putting up a hoarding, he would be liable to TDS under section 194-I and not under section 194C of the Act.

Question 6 : Whether payment under a contract for carriage of goods or passengers by any mode of transport would include payment made to a travel agent for purchase of a ticket or payment made to a clearing and forwarding agent for carriage of goods ?

Answer : The payments made to a travel agent or an airline for purchase of a ticket for travel would not be subjected to tax deduction at source as the privity of the contract is between the individual passenger and the airline/travel agent, notwithstanding the fact that the payment is made by an entity mentioned in section 194C(1). The provision of section 194C shall, however, apply when a plane or a bus or any other mode of transport is chartered by one of the entities mentioned in section 194C of the Act. As regards payments made to clearing and forwarding agent for carriage of goods, the same shall be subjected to tax deduction at source under section 194C of the Act.

Question 7 : Whether a travel agent/clearing and forwarding agent would be required to deduct tax at source from the sum payable by the agent to an airline or other carrier of goods or passengers ?

Answer : The travel agent, issuing tickets on behalf of the airlines for travel of individual passengers, would not be required to deduct tax at source as he acts on behalf of the airlines. The position of clearing and forwarding agents is different. They act as independent contractors. Any payment made to them would, hence, be liable for deduction of tax at source. They would also be liable to deduct tax at source while making payments to a carrier of goods.

Question 8 : Whether section 194C would be attracted in respect of payments made to couriers for carrying documents, letters, etc. ?

Answer : The carriage of documents, letters, etc., is in the nature of carriage of goods and, therefore, provisions of section 194C would be attracted in respect of payments made to the couriers.

Question 9 : In case of payments to transporters, can each GR be said to be a separate contract, even though payments for several GRs are made under one bill ?

Answer : Normally, each GR can be said to be a separate contract, if the goods are transported at one time. But if the goods are transported continuously in pursuance of a contract for a specific period or quantity, each GR will not be a separate contract and all GRs relating to that period or quantity will be aggregated for the purpose of the TDS.

Question 10 : Whether there is any obligation to deduct tax at source out of payment of freight when the goods are received on "freight to pay" basis ?

Answer : Yes. The provisions of tax deduction at source are applicable irrespective of the actual payment.

Question 11 : Whether a contract for catering would include serving food in a restaurant/sale of eatables?

Answer : TDS is not required to be made when payment is made for serving food in a restaurant in the normal course of running of the restaurant/cafe.

Question 12 : Whether payment to a recruitment agency can be covered by section 194C ?

Answer : Provisions of section 194C apply to a contract for carrying out any work including supply of labour for carrying out any work. Payments to recruitment agencies are in the nature of payments for services rendered. Accordingly, provisions of section 194C shall not apply. The payment will, however, be subject to TDS under section 194J of the Act.

Question 13 : Whether section 194C would cover payments made by a company to a share registrar ?

Answer : In view of answer to the earlier question, such payments will not be liable for tax deduction at source under section 194C. But these will be liable to tax deduction at source under section 194J.

Question 14 : Whether FD commission and brokerage can be covered under section 194C ?

Answer : No

Question 15 : Whether section 194C would apply in respect of supply of printed material as per prescribed specifications ?

Answer : Yes.

Question 16 : Whether tax is required to be deducted at source under section 194C or 194J on payment of commission to external parties for procuring orders for the company's product ?

Answer : Rendering of services for procurement of orders is not covered under the provisions of section 194C. However, rendering of such services may involve payment of fees for professional or technical services, in which case tax may be deductible under the provisions of section 194J.

Question 17 : Whether advertisement contracts are covered under section 194C only to the extent of payment of commission to the person who arranges release of advertisement, etc., or whether deduction is to be made on the gross amount including bill of media ?

Answer : Tax is to be deducted at the rate of 1 per cent of the gross amount of the bill.

Question 18 : Whether deduction of tax is required to be made under section 194C for sponsorship of debates, seminars and other functions held in colleges, schools and associations with a view to earn publicity through display of banners, etc., put up by the organisers ?

Answer : The agreement of sponsorship is, in essence, an agreement for carrying out a work of advertisement. Therefore, provisions of section 194C shall apply.

Question 19 : Whether deduction of tax is required to be made on payments for cost of advertisement issued in the souvenirs brought out by various organisations ?

Answer : Yes.

Question 20 : Whether payments made to a hotel for rooms hired during the year would be of the nature of rent ?

Answer : Payments made by persons, other individuals and HUFs for hotel accommodation taken on regular basis will be in the nature of rent subject to TDS under section 194-I.

Question 21 : Whether the limit of Rs. 1,20,000 per annum would apply separately for each co-owner of a property ?

Answer : Under section 194-I, the tax is deductible from payment by way of rent, if such payment of the payee during the year is likely to be Rs. 1,20,000 or more. If there are a number of payees, each having definite and ascertainable share in the property, the limit of Rs. 1,20,000 will apply to each of the payee/co-owner separately. The payers and payees are, however, advised not to enter into sham agreements to avoid TDS provisions.



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Question 22 : Whether the rent paid should be enhanced for notional income in respect of deposit given to the landlord ?

Answer : The tax is to be deducted from actual payment and there is no need of computing notional income in respect of a deposit given to the landlord. If the deposit is adjustable against future rent, the deposit is in the nature of advance rent subject to TDS.

Question 23 : Whether payments made by company taking premises on rent but styling the agreement as a business centre agreement would attract the provisions of section 194-I ?

Answer : The tax is to be deducted from rent paid, by whatever name called, for hire of a property. The incidence of deduction of tax at source does not depend upon the nomenclature, but on the content of the agreement as mentioned in clause (i) of *Explanation* to section 194-I.

Question 24 : Whether in a case of a composite arrangement for user of premises and provision of manpower for which consideration is paid as a specified percentage of turnover, section 194-I of the Act would be attracted ?

Answer : If the composite arrangement is in essence the agreement for taking premises on rent, the tax will be deducted under section 194-I from payments thereof.

Question 25 : Whether the receipts prior to 1-7-1995 are to be aggregated to determine limit of Rs. 20,000 for each financial year ?

Answer : Clause (B) of proviso to section 194J(1) makes it clear that tax shall be deducted at source if the aggregate sums credited or paid or likely to be credited or paid during the financial year are likely to exceed Rs. 20,000. Therefore, in regard to financial year 1995-96, the limit of Rs. 20,000 will have to be worked out taking into account all the payments from 1-4-1995 to 31-3-1996. But the deduction of tax at source would be made at the specified rate only from the payment made on or after 1-7-1995.

Question 26 : Whether payments made to a hospital for rendering medical services will attract deduction of tax at source under section 194J ?

Answer : Yes.

Question 27 : Whether commission received by the advertising agency from the media would require deduction of tax at source under section 194J of the Act ?

Answer : Yes.

Question 28 : Whether the services of a regular electrician on contract basis will fall in the ambit of technical services to attract the provisions of section 194J of the Act? In case the services of the electrician are provided by a contractor, whether the provisions of section 194C or 194J would be applicable ?

Answer : The payments made to an electrician or to a contractor who provides the service of an electrician will be in the nature of payment made in pursuance of a contract for carrying out any work. Accordingly, provisions of section 194C will apply in such cases.

Question 29 : Whether a maintenance contract including supply of spares would be covered under section 194C or 194J of the Act ?

Answer : Routine, normal maintenance contracts which includes supply of spares will be covered under section 194C. However, where technical services are rendered, the provision of section 194J will apply in regard to tax deduction at source.

Question 30 : Whether the deduction of tax at source under sections 194C and 194J has to be made out of the gross amount of the bill including reimbursements or excluding reimbursement for actual expenses ?

Answer : Sections 194C and 194J refer to any sum paid. Obviously, reimbursements cannot be deducted out of the bill amount for the purpose of tax deduction at source.

Question 31 : Whether TDS from income in respect of units is applicable to dividend or is it applicable to capital appreciation distributed at the time of repurchase/redemption of the units ?

Answer : The provisions of section 194K regarding deduction of tax at source from income in respect of units are applicable to periodical distribution of income, which is in the nature of dividend. These provisions do not apply to capital gains arising at the time of repurchase or redemption of the units.

Question 32 : Whether TDS on reinvestment term deposit should be made on accrual basis, which is quarterly, or once in a financial year ?

Answer : Tax has to be deducted at source at the time of credit of interest to the account of the payee or at the time of payment thereof, whichever is earlier. If credit is given to the account of the payee or payment is made to him annually, the tax may be deducted annually. It may be clarified that a credit to interest payable account or suspense account, etc., is also taken as credit to the account of the payee, even though this credit is not reflected separately in the payee's account.

Question 33 : Whether variable deposit schemes are liable to deduction of tax at source from interest ?

Answer : Under section 194A, tax is to be deducted from interest from banks on time deposits. As variable deposits are in the nature of time deposits, tax is deductible at source from interest on such deposits.

Question 34 : Whether tax has to be deducted from principal on renewal of deposits made after 1-7-1995 but which matured on or before 30-6-1995 when the renewal is made retrospectively?

Answer : Tax has to be deducted from interest credited or paid, whichever is earlier, on time deposits with a bank made on or after 1-7-1995. When a time deposit is renewed retrospectively, the relevant date for deciding the applicability of section 194A would be that date of renewal. Thus, if the time deposit is renewed after 1-7-1995, the tax deduction at source will have to be made from interest paid or credited in respect of such a time deposit.

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INCOME TAX DEPARTMENT